

Serial No.: 10/532,789
Examiner: Alexander S. Noguerola
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REMARKS

Reconsideration is requested in view of the following remarks. Claims 1 and 3-8 remain pending in the application.

Applicants appreciate the courtesy shown by the Examiner in discussing this case with Applicants' representative, Christine Yang, on October 28, 2009. The discussions of the interview are reflected in the following remarks.

Claims 1 and 3-8 are rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. Applicants respectfully traverse this rejection.

The rejection contends that page 10, lines 15-16 of the specification does not make any mention of reagent and that the reagent is not mentioned until the following paragraph. Applicants respectfully submit that the reagent portion was taken into consideration when "the sectional area of the capillary at the downstream edge 13a is made smaller than other portions" at page 10, lines 15-16 was stated. Page 9, lines 1-3 provides that the upper surface 10a of the substrate is formed with a working electrode 15, a counter electrode 16, a dummy electrode 17, an insulating film 18 and a reagent portion 19 (see also Figs. 1-4). Also, it is clear, when the "other portion" was stated at page 10, line 16, it meant the "other portions" of the upper surface 10a of the substrate 10. It is clear that when the "other portions" at page 10, line 16 was stated, the reagent portion was taken into consideration as one of the other portions.

The rejection further contends that the difference in height of the top surface of the stepped portion from the top surface of the reagent portion shown in the figures is so small as to appear accidental. Applicants respectfully submit that the difference is not accidental for the following reasons.

First, Figs. 2 and 3 both show that the top surface of the stepped portion is higher than the top surface of the reagent portion, i.e., the stepped portion being greater in height with respect to the substrate than the reagent portion is shown in both Figs. 2 and 3. In view of the description on page 4, lines 17-21 and page 10, lines 9-19 of the specification, the greater height of the stepped portion relative to the substrate is not "accidental" and

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should be recognized as an intended feature. As disclosed on page 4, lines 17-21 and page 10, lines 9-19 of the specification, a sample liquid loaded into a capillary can be prevented by the stepped portion from moving further so that the sample can be analyzed properly.

Second, even if the drawings are not necessarily drawn to scale, the fact that Figs. 2 and 3 both show that "the stepped portion is greater in height with respect to the substrate than the reagent portion" shows that a feature is being illustrated intentionally. A question concerning whether a drawing is to scale is raised when an argument is made based on measurement of the drawing features (Discussed in MPEP 2125.). However, the limitation at issue does not require specific measurements based on Figs. 2 and 3, but merely the general relationship that the stepped portion is greater in height than the reagent portion, which is seen readily in the drawings.

With respect to Examiner's concern about the term "sectional area" on page 10, line 15 of the specification, Applicants respectfully submit that it is clear that the term "sectional area" refers to the core area of the capillary, but not the surface area of the capillary. In view of the description on page 4, lines 17-21 of the specification, it is clear that page 10, lines 15-19 of the specification means that a smaller core area of the capillary is made in order to prevent the "blood existing on the upper surface 10a of the substrate 10" from moving at the downstream edge 13a of the capillary 13 beyond the stepped portion 18B (See also Figs. 2-4). One of ordinary skill in the art would understand that, in order to prevent further flow of the sample liquid, the smaller "sectional area" would refer a smaller core area of the capillary, but not a smaller surface area of the capillary.

For at least the reasons above, Applicants respectfully submit that the feature of "the stepped portion is greater in height with respect to the substrate than the reagent portion" in claim 1 is adequately supported by the original disclosure and the rejection should be withdrawn.

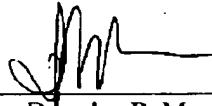
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In view of the above, favorable reconsideration in the form of a notice of allowance is respectfully requested. Any questions regarding this communication can be directed to the undersigned attorney, Douglas P. Mueller, Reg. No. 30,300, at (612) 455-3804.

Respectfully submitted,

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Dated: February 22, 2010

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DPM/cy